



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0225

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112172.

The City of Houston (the "city") received a request for a specific incident report. You state that the Public Information portion of the incident report has been released. However, you claim that the remaining information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Additionally, section 552.103(b) provides that the state or a political subdivision is considered to be a party to litigation of a criminal nature until the defendant has exhausted all post-conviction remedies in state and federal court.

The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test

for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a). You inform us that one of the suspects has filed a notice of appeal that is pending in the applicable court. After reviewing the submitted material, we find that litigation is pending. We also conclude that the documents you have submitted relate to the litigation, and may be withheld.

In so ruling, we assume that none of the information in the records at issue has previously been made available to the criminal defendant or his prior attorneys during the course of the criminal prosecution. Generally, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the defendant or his attorneys have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).

As we are able to make a determination under section 552.103, we do not address your additional argument against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/gle

Ref.: ID# 112172

Enclosures: Submitted documents

cc: Ms. Marilyn Mills-Hunt
5350 W. Gulfbank, # 603
Houston, Texas 77088
(w/o enclosures)